

1 STUART H. SINGER (*Pro Hac Vice*)
2 CARLOS M. SIRES (*Pro Hac Vice*)
3 SIGRID S. MCCAWLEY (*Pro Hac Vice*)
4 BOIES, SCHILLER & FLEXNER LLP
5 401 East Las Olas Boulevard, Suite 1200
6 Fort Lauderdale, Florida 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022
E-mail: ssinger@bsfllp.com
E-mail: csires@bsfllp.com
E-mail: smccawley@bsfllp.com

7 WILLIE E. GARY (*Pro Hac Vice*)
GARY, WILLIAMS, LEWIS, &
8 WATSON, P.L.
221 East Osceola Street
9 Stuart, Florida 34994
Telephone: (772) 283-8260
10 Facsimile: (772) 220-3343
E-mail: weg@williegary.com

12 Attorneys for Plaintiffs
JEFF POKORNY, LARRY BLENN
and KENNETH BUSIERE

CEDRIC C. CHAO (CA SBN 76045)
WILLIAM L. STERN (CA SBN 96105)
S. RAJ CHATTERJEE (CA SBN 177019)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: 415.268.7000
Facsimile: 415.268.7522
E-mail: cchao@mofo.com
E-mail: wstern@mofo.com
E-mail: schatterjee@mofo.com

JAMES R. SOBIERAJ (*Pro Hac Vice*)
BRINKS HOFER GILSON & LIONE
455 N. Cityfront Plaza Drive
Chicago, Illinois 60611
Telephone: 312.321.4200
Facsimile: 312.321.4299
E-mail: jsobieraj@usebrinks.com

Attorneys for Defendant
QUIXTAR INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JEFF POKORNY, LARRY BLEN
and KENNETH BUSIERE on behalf of
themselves and those similarly situated,

Plaintiffs,

V.

QUIXTAR INC.,

Defendant.

Case No. C 07-00201 SC

**[PROPOSED] ORDER
GRANTING PLAINTIFFS' AND
DEFENDANT QUIXTAR'S JOINT
MOTION TO MODIFY THE
COURT'S DECEMBER 27, 2012
ORDER APPOINTING SPECIAL
MASTER**

1 *Additional counsel for*
2 *Plaintiffs Jeff Pokorny, Larry Blenn and*
3 *Kenneth Busiere:*

4 DAVID BOIES (*Pro Hac Vice*)
5 BOIES, SCHILLER & FLEXNER LLP
6 333 Main Street
7 Armonk, NY 10504
8 Telephone: (914) 749-8200
9 Facsimile: (914) 749-8300
10 E-mail: dboies@bsfllp.com

11 DAVID W. SHAPIRO (CA SBN 219265)
12 BOIES, SCHILLER & FLEXNER LLP
13 1999 Harrison Street, Suite 900
14 Oakland, California 94612
15 Telephone: (510) 874-1000
16 Facsimile: (510) 874-1460
17 E-mail: dshapiro@bsfllp.com

1 The Court, having considered Plaintiffs' and Quixtar's Joint Motion to Modify the Court's
 2 December 27, 2012 Order Appointing Special Master ("Joint Motion"), and

3 Good cause appearing therefor;

4 IT IS HEREBY ORDERED that:

5 The Joint Motion is GRANTED.

6 Paragraph 5 of the December 27, 2012 Order shall be and hereby is modified to read as
 7 follows:

8 5. Fairness Considerations. Pursuant to Rule 53(a)(3), the
 9 Court has considered the fairness of paying the likely fees and
 10 expenses of the Special Master from the Cash Fund. The Court
 11 believes that the appointment and use of the Special Master will
 12 materially advance the litigation, thereby achieving considerable
 13 cost-savings to all parties. Moreover, the Court notes that the
 14 parties' ASA specifically contemplates appointment of a Special
 15 Master, that the parties have consented to the Special Master's
 16 appointment, and that the ASA provides that the Special Master's
 17 costs shall be paid from the Cash Fund, as discussed in paragraph
 18 herein. The Court will protect against unreasonable fees,
 19 expenses, and delay through review and approval of the Special
 20 Master's work plan, fee proposal, budget, and invoices, and through
 21 regular communication with the Special Master.

22 Paragraph 8 of the December 27, 2012 Order shall be and hereby is modified to read as
 23 follows:

24 8. Scope of Special Master's Duties. Pursuant to Rule
 25 53(b)(2)(A), the Special Master shall assist the Court with matters
 26 such as: administering special hardship claims, including assessing
 27 whether supporting documentation is sufficient and adjudicating the
 28 appropriate dollar value of each claim, pursuant to section 6.1.2 of
 the ASA; preparing a report with recommendations as to whether
 the current limit on individual special hardship awards or the
 current limit on aggregate special hardship payments should be
 amended and with recommendations on how to effect the final
 distribution of cash and products, consistent with the terms of the
 ASA and the Court's own powers; preparing reports with
 recommendations on any motions that may later be filed;
 determining any issue of law or fact necessary to discharging the
 foregoing duties, subject to review as provided in paragraphs 15
 through 19; and other matters in which the Court wishes to utilize
 his services.

1 Paragraph 13 of the December 27, 2012 Order shall be and hereby is modified to read as
2 follows:

3 13. Compensation. Pursuant to Rules 53(b)(2)(E) and 53(g), the
4 parties shall confer with the Special Master to set his rates. The
5 Special Master may hire or employ, at a reasonable rate, other
6 personnel to assist in completion of the duties set forth in this
7 Order, and the Special Master shall be reimbursed for payments
8 made to such personnel as part of his expenses. The Special
9 Master, having initially conferred with the parties on these and
10 other issues on January 18, 2013, shall prepare a work plan, fee
11 proposal, and budget for the parties' review and the Court's
12 approval. The Special Master shall prepare a monthly invoice for
13 his fees and expenses, which shall be paid from the Cash Fund
14 established pursuant to the ASA. Upon approval by the Court, the
15 parties shall promptly direct the Escrow Agent to pay such invoices.

16
17 IT IS SO ORDERED.

18 Dated: January 31, 2013


19 HON. SAMUEL CONTI
20 United States District Court Judge